

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 9:12-cv-80346

BEEKMAN VISTA, INC.,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

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COMPLAINT

Plaintiff, Beekman Vista, Inc., files this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to compel disclosure of agency records that have been unlawfully withheld by the Internal Revenue Service (“IRS”).

1. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 2201-2202.
2. Venue is proper in this Court pursuant to 5 U.S.C. §552(a)(4)(B).
3. Plaintiff is the requester of agency records that have been improperly withheld.
4. The Defendant, Internal Revenue Service, is an agency of the United States government and has possession and control over the documents and materials that Plaintiff seeks in its FOIA claims.

5. On March 2, 2011, Plaintiff submitted, by letter to Defendant's Disclosure Scanning Operation, a FOIA request to Defendant for records relating to the income tax returns of Plaintiff for tax years 2005, 2006, and 2007 and any and all documents relating to Defendant's examination of such, all as more particularly described in such FOIA request:

a. any and all statements made by Plaintiff, any representative of Plaintiff, and any and all statements made by any other third parties in regard to: 1) the income tax return (Form 1120)/preparation of the income tax return for tax years 2005, 2006 and 2007; 2) the Form 1042, Form 5472/preparation of these returns for tax years 2005, 2006, and 2007; and 3) the collection of tax relating to tax years 2005, 2006 and 2007, including all documents obtained or generated in the Defendant's examination file for tax years 2005, 2006 and 2007;

b. a listing of any and all Summonses issued by Defendant to any third parties for documents and/or testimony in regard to the above;

c. all material in Defendant's files relating to: 1) the income tax for tax years 2005, 2006 and 2007; 2) the Forms 1120, Forms 1042, and Forms 5472 for tax years 2005, 2006, and 2007; and 3) the collection of tax for tax years 2005, 2006 and 2007, including, but not limited to, the tax returns themselves and all accompanying statements and schedules, correspondence between Defendant and Plaintiff or its representatives regarding said return, reports (internal or otherwise) of examining or other agents prepared in connection with or following an examination of, collection of, or other

review of said returns, and the record of assessment for tax years 2005, 2006 and 2007;
and

d. any documents prepared by any employee of Defendant indicating or pertaining to the filing, examination and/or collection of the income tax and Forms 1120, 1042, 5472 of Plaintiff for tax years 2005, 2006 and 2007.

The FOIA request is attached hereto as **Exhibit A**.

6. On March 30, 2011, Defendant sent a letter to Plaintiff informing Plaintiff that Defendant received the FOIA request on March 8, 2011, that Defendant was not able to send the information requested by Plaintiff by April 5, 2011, which is the 20 business-day period required by law, and that it required an additional ten-day statutory extension to complete the request to “search for and collect the requested records from other locations.” *See Exhibit B*.

7. On April 15, 2011, Defendant sent a letter to Plaintiff informing Plaintiff that the estimated cost to process its FOIA request was \$895.00 and that Defendant was deferring the processing of the request until Defendant received advance payment from Plaintiff. *See Exhibit C*.

8. On May 5, 2011, Plaintiff submitted, by letter to Defendant’s Disclosure Scanning Operation, a check in the amount of \$895.00 in payment of the requested processing fee and requested that Defendant provide Plaintiff with the requested copies. *See Exhibit D*.

9. On June 16, 2011, Defendant sent a letter to Plaintiff informing Plaintiff that Defendant received Plaintiff’s letter dated May 5, 2011, that Defendant was not able to send the information requested by Plaintiff by June 16, 2011 which is the 20 business-day period required

by law, and that Defendant required an additional ten-day statutory extension to complete the request “to search for, collect, and review responsive records from other locations.” Defendant’s letter dated June 16, 2011 requests an additional extension of time to July 18, 2011. Defendant’s letter dated June 16, 2011 states: “You may file suit after June 30, 2011.” *See Exhibit E.*

10. On July 18, 2011, Defendant sent a letter to Plaintiff requesting an additional extension of time to August 31, 2011. *See Exhibit F.*

11. On August 31, 2011, Defendant sent a letter to Plaintiff requesting an additional extension of time to October 31, 2011. *See Exhibit G.*

12. On October 31, 2011, Defendant sent a letter to Plaintiff requesting an additional extension of time to November 21, 2011. *See Exhibit H.*

13. On December 19, 2011, Defendant sent a letter to Plaintiff alleging that Defendant requested an additional extension of time on November 21, 2011, but Plaintiff is unable to locate any record of such request from Defendant. Defendant’s letter dated December 19, 2011 requests an additional extension of time to February 10, 2012. *See Exhibit I.*

14. On February 8, 2012, Defendant sent a letter to Plaintiff requesting an additional extension of time to March 16, 2011. *See Exhibit J.*

15. On March 16, 2012, Defendant sent a letter to Plaintiff requesting an additional extension of time to April 30, 2012. *See Exhibit K.*

16. As of the date of the filing of this action, Defendant has not produced any of the requested documents.

17. Plaintiff has exhausted its administrative remedies.

18. Plaintiff is authorized and entitled to receive the records requested and there is no legal basis for Defendant's failure to disclose the records requested.

WHEREFORE, Plaintiff prays that this Court: declare that the failure of Defendant to disclose the records requested by Plaintiff is unlawful; order Defendant to disclose the requested records to Plaintiff; expedite its consideration of this action pursuant to 28 U.S.C. § 1657; maintain jurisdiction over this action until Defendant complies with the Freedom of Information Act and this Court's Order(s); award Plaintiff reasonable costs and attorney's fees as provided in 5 U.S.C. § 552(a)(4)(E) and/or 28 U.S.C. § 2412; and grant such other and further relief as the Court may deem just and proper.

Dated: April 2, 2012

/s/

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